# BEFORE THE
# PHYSICIAN ASSISTANT BOARD
# DEPARTMENT OF CONSUMER AFFAIRS
# STATE OF CALIFORNIA

## In the Matter of the Accusation Against:

## CLAYTON T. RECTOR, P.A., Respondent

## Case No. 950-2018-002094

## OAH No. 2021090590

## DECISION AFTER REJECTION

Marcie Larson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on March 14 through 17, 2022, from Sacramento, California.

Ryan McEwan, Deputy Attorney General, represented complainant Rozana Khan, Executive Officer of the Physician Assistant Board (Board), Department of Consumer Affairs (Department).

Nichole Hendrickson, Attorney at Law, represented respondent Clayton Rector, who appeared at the hearing.

Evidence was received, the record closed, and the matter was submitted for decision on March 17, 2022.

The Proposed Decision of the Administrative Law Judge was submitted to the Board on April 18, 2022. The Board formally considered the Proposed Decision at its meeting on May 9, 2022, where, after due consideration, it declined to adopt the Proposed Decision. Thereafter, the Board issued an Order of Rejection, dated May 12, 2022, ordered the hearing transcript, notified the parties of their opportunity to submit written argument, and fixed the date for submission of written argument on October 25, 2022.

Written argument has been filed by both parties, and the time for filing written argument in this matter having expired, and the entire record, including the transcript of the hearing having been read and considered, the Board hereby makes the following decision pursuant to Government Code Section 11517:

## FACTUAL FINDINGS

### Jurisdictional Matters

1. On or about May 14, 2002, the Board issued respondent Physician Assistant License No. PA 16404 (license). Respondent's license was in full force and effect at all times relevant to the charges set forth in the Accusation, and will expire on March 31, 2022, unless renewed or revoked.

2. On June 17, 2021, complainant, acting in her official capacity, signed and thereafter filed an Accusation against respondent. Complainant seeks to impose discipline on respondent's license based upon his alleged gross negligence, repeated acts of negligence, and unprofessional conduct related to the examinations of two female patients.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

## Background and Patient Complaints

4. In June 2009, respondent was hired as a physician assistant for the Mercy Medical Group (Mercy), in Sacramento, California. Respondent worked in the Mercy Medical Group Gastroenterology Clinic (MMG Clinic). Respondent's duties included providing care and treatment to patients with gastrointestinal issues. He also ran the Hepatitis C and inflammatory bowel treatment programs. In 2018, there were eight to ten physicians working at the MMG Clinic. Rana Khan, M.D. was respondent's supervising physician. Respondent was the only physician assistant. On a typical day, respondent would see approximately 20 patients.

### PATIENT A COMPLAINT

5. Patient A is a 37-year-old, college educated, married mother of three young children. Patient A testified at hearing. Patient A had an eight-year history of gastrointestinal issues. Patient A had been living in Oregon while her husband attended medical school and completed his residency program. Patient A received treatment for her gastrointestinal issues while living in Oregon. In 2016, Patient A and her family moved to Sacramento. Patient A continued to have gastrointestinal issues and needed an endoscopy procedure performed. She made an appointment at the MMG Clinic to obtain a referral for the endoscopy procedure.

6. On or about January 24, 2018, Patient A arrived at the MMG Clinic for an initial visit. She was told respondent would be her provider. Patient A was taken to an

examination room by a medical assistant. Respondent then entered the examination room. Respondent and Patient A were the only people in the room. Patient A was not offered a chaperone. Respondent asked Patient A questions about her medical history and symptoms. Patient A told respondent she had symptoms on an off for eight years. At times her discomfort required a visit to the emergency room and she would be placed on medication. Patient A reported that her current symptoms included pain in the upper abdomen along her rib cage. She told respondent that she was planning to undergo an upper endoscopy while living in Oregon but was unable to do so. She asked respondent for a referral so that she could have the procedure.

7. Respondent asked Patient A if he could perform an abdominal examination. She agreed. Patient A had undergone many abdominal examinations and was familiar with the process. Patient A laid on the examination table, rolled up her long sweater and tucked it under her bra. She then lowered her elastic waistband track pants to above her pubic bone so that her abdomen was exposed. Her hip bones were covered by the waistband of her track pants. Respondent then palpated Patient A's abdomen and asked her where the pain was located and if she was feeling any discomfort with the palpation. Patient A indicated where in her abdomen the pain was located. Respondent continued to ask Patient A questions as he palpated her abdomen, including how often she experienced pain.

While conversing with respondent as he performed the examination, Patient A felt respondent lift the waistband of her pants up for a few seconds exposing her underwear and pubic area. He then lowered her waistband back down. Patient A was unable to see how high respondent lifted her waistband. However, she thought it was odd because respondent did not explain what he was doing or what he was looking for when he lifted her waistband. Patient A had not complained of any pain in her

pelvic or pubic area. Patient A was uncomfortable with respondent's conduct. However, she was preoccupied because she was in mid-conversation with respondent when he lifted her waistband, so she did not ask respondent why he lifted her waistband.

8. Respondent finished the examination. Patient A sat up and moved to a chair in the examination room. Respondent told Patient A that he would put in an order for an upper endoscopy. Respondent documented that he performed a complete physical examination. Prior to Patient A leaving the examination room, respondent mentioned something about God, which Patient A also thought was odd. Patient A practices Islam and her head was covered with a scarf.

9. After Patient A went home, she continued to reflect on respondent's conduct and her past abdominal examinations. Patient A's past medical providers had asked her permission to adjust her waistband if that was needed to perform the examination. Respondent had not. Patient A spoke to her husband and a cousin about respondent's conduct. Patient A's husband suggested she call the MMG Clinic and speak to the head physician to find out if respondent's conduct was consistent with how examinations were performed.

10. On January 25, 2018, Patient A called the MMG Clinic and requested to speak to the head physician. Patient A was connected to the office manager. Patient A left her telephone number. Her call was not returned so she left another message with details about what had occurred during her examination. After approximately one week, Patient A still did not receive a return call from the MMG Clinic. Patient A then called the Mercy patient satisfaction line and spoke with a Mercy employee. Patient A explained to the employee that she was trying to reach someone from the MMG Clinic concerning her experience with respondent.

The employee informed Patient A that she would contact the MMG Clinic office manager. Within 30 minutes, Patient A received a call from William Walker, a manager for Mercy. He asked Patient A to explain what occurred during her examination with respondent. Patient A provided Mr. Walker with the information he requested. Mr. Walker told Patient A that he would look into the incident. Patient A never received any information regarding the outcome of her complaint.

11. Patient A never saw respondent again. Since the incident she no longer wants to be treated by male medical providers. She has elected to have female medical providers when available. She has also become anxious about being placed under sedation because she is unsure about the people Mercy has hired. Her trust in the health community has also been affected. Patient A does not know Patient B and has never spoken to her about respondent.

## PATIENT B COMPLAINT

12. Patient B is a 39-year-old married mother with a history of gastrointestinal complaints and other medical issues. Patient B testified at hearing. Starting in 2015, Patient B began seeing Dr. Khan at the MMG Clinic for her gastrointestinal complaints. Patient B had undergone extensive evaluations concerning her complaints, including laboratory tests, a colonoscopy, an endoscopy, ultrasound, a computerized tomography (CT scan), a hepatobiliary (HIDA) scan, gastric emptying, a stool study, Sitzmarks exam, and other upper gastrointestinal and small bowel testing.

13. On or about August 9, 2018, Patient B was evaluated by Dr. Khan for abdominal pain. Dr. Khan noted that the pain might be related to intestinal spasm or constipation. Dr. Khan spoke to Patient B about obtaining approval for a capsule

endoscopy to further evaluate her complaints. Patient B scheduled an appointment at the MMG Clinic for September 5, 2018, to obtain an order for the capsule endoscopy.

14. On September 5, 2018, Patient B was evaluated by respondent at the MMG Clinic. Patient B had not been treated by respondent prior to this visit. Patient B was taken to an examination room by a medical assistant, who also took her vital signs. The medical assistant left the room and respondent entered. Patient B was not offered a chaperone. Respondent asked Patient B the reason for the visit. Patient B provided respondent information regarding her complaints and request for a capsule endoscopy.

Respondent documented the reason for the visit was "[f]ollow-up regarding abdominal pain and changes in stools." He also documented that she complained of weight loss. Patient B explained to respondent that her pain was from just below her belly button to the upper part of her abdomen. She did not complain of groin or pelvic pain.

Respondent asked Patient B if he could examine the upper part of her abdomen. Patient B agreed. Patient B was wearing jeans and a shirt. Respondent asked Patient B to lay on the examination table so he could perform an abdominal examination. Patient B laid on the examination table and tucked her shirt under her bra to expose her abdomen. Patient B did not lower the waistband of her jeans. Respondent then palpated her abdomen and asked Patient B questions.

At one point during the examination, respondent stated words to the effect of "let me see something." Without permission, he unbuttoned and unzipped Patient B's pants. He then reached his hand down her pants and underneath her underwear. He then touched the right-side hip crease and then grazed her vaginal lip area as he

moved his hand to touch the left-side hip crease. Respondent then lifted Patient B's underwear exposing her pubic area. He quickly looked at the pubic area and then lowered her underwear. Respondent was talking during this part of the examination but did not tell Patient B what he was doing or why he was examining this area of her body.

After respondent let go of Patient B's underwear, he said that he would work on getting the paperwork submitted for the capsule endoscopy. He then left the room. Respondent documented he performed a complete physical examination. After respondent left the examination room, Patient B stood up and realized she had to zip up her pants and "she did not feel good." Patient B had to pick up her children from school and take a flight to Arizona to attend her aunt's funeral, so she had not fully processed what had occurred during her examination. She had never had that experience with another medical provider.

15. Later the same day while flying to Arizona, Patient B spoke to her grandmother about what had occurred during her examination. Her grandmother encouraged her to report what had occurred. Patient B initially did not want to tell anyone because she was embarrassed. However, after reflection, she decided to make a complaint. On September 13, 2018, Patient B spoke to Mr. Walker and describe respondent's conduct during her examination. Patient B was eventually informed by Mercy that her complaint had been addressed, but she was not provided any details.

16. Patient B has continued to receive treatment at MMG Clinic. However, she has not seen respondent since her September 5, 2018 appointment. Patient B is now treated by female providers when possible because she is no longer comfortable with male providers. The incident with respondent has continued to affect Patient B. She has anxiety when dealing with medical providers and she is angry about the

incident. Patient B does not know Patient A and has never spoken to her about respondent.

## Complaints Investigation

17. On September 26, 2018, respondent was terminated from his position with Mercy. Thereafter, Mercy filed a "Health Facility/Peer Review Reporting Form" with the Medical Board Central Complaint Unit stating respondent had been terminated from his position. The notification prompted the Board to investigate the patient complaints. Sean Cogan, an investigator with the Department's Division of Investigation was assigned to investigate the complaints. Mr. Cogan interviewed respondent and the patients. Mr. Cogan prepared an investigation report.

18. On July 17, 2020, respondent was interviewed by Mr. Cogan and Howard Slyter, M.D., District Medical Consultant. Respondent was represented by counsel. Dr. Slyter asked respondent about his customs and practice when examining patients complaining of abdominal pain. Respondent explained that he examined patients while they were wearing their street clothes. If he conducts an abdominal examination, he has the patient lay down, lift up their top to the bottom of their rib cage and position the waistband of their pants at their hip bones. Respondent also stated that "100 percent of the time" he had a chaperone present if he was examining a patient's "genitalia or sensitive areas."

19. Mr. Cogan and Dr. Slyter asked respondent if he recalled examining Patients A and B. Respondent had limited recollection of both patients. He recalled that the patients were added on to his schedule and that he had never treated the patients. Based on his review of Patient A's record, she had requested an appointment for persistent and worsening abdominal pain. Patient A had never been seen at the

MMG Clinic. Respondent recalled Patient A was of "Middle Eastern descent" and wore a head covering. After obtaining a history from Patient A, he asked her to lay down on the examining table, lift her top to her ribs and lower her pants to her lower hip area.

Respondent conducted an abdominal examination which included auscultating and palpitating the right and left upper and lower quadrants of the abdomen. During palpation respondent looked for signs of pain. Respondent stated that he would not have lifted the waistband of Patient A's track pants and looked at her underwear and genital area. Respondent did not offer to have a chaperone present because he did not touch or evaluate Patient A's genitalia or sensitive areas.

20. Based on respondent's review of Patient B's medical records for September 5, 2018, respondent conducted an abdominal examination that included auscultating and palpitating the right and left upper and lower quadrants of the abdomen. During palpation respondent looked for signs of pain. Respondent also stated that his examinations include inspecting and palpating the lymph nodes, including the horizontal inguinal nodes area near the groin and hip bones, to check for abnormalities. Respondent stated that it was his customary practice to check the inguinal lymph nodes on any patient complaining of abdominal pain.

Respondent denied that he unzipped or unbuttoned Patient B's pants. He did not recall reaching into her pants or underwear. Respondent contended he was able to palpate the inguinal lymph nodes without placing his hands down her pants. Respondent did not offer to have a chaperone present because he did not see, touch, expose or examine genitalia or sensitive areas.

## Expert Opinion

21. Kenneth Buch, M.D., testified as an expert witness on behalf of complainant. In 1978, Dr. Buch obtained his medical degree from Cornell Medical College. From 1978 until 1981, he completed his internship and residency in internal medicine at the Albany Medical Center Hospital. In 1981, Dr. Buch obtained his California medical license. From 1981 until 1983, he completed a fellowship at the University of California Los Angeles (UCLA) Wadsworth Veteran's Administration Gastroenterology Training Program. Dr. Buch is a Diplomate of the American Board of Internal Medicine and American Board of Gastroenterology.

Since 1983, Dr. Buch has operated a Gastroenterology private practice. He has also served as a Clinical Instructor and Assistant Clinical Professor at UCLA, teaching the fundamentals of clinical medicine to third year medical students. Dr. Buch has served as an expert for the California Medical Board, reviewing more than 30 cases. This is the first case he has reviewed for the Board.

22. On February 16, 2021, following a referral from the Division of Investigation, Dr. Buch authored a report concerning his evaluation of respondent's conduct related to his examinations of Patients A and B. In his report, Dr. Buch listed the documents he reviewed to reach his opinions and conclusions, including Patient A and B's statements and medical records, the Board's investigation report, and respondent's Board interview. Dr. Buch considered the statements provided by Patients A and B concerning respondent's conduct during their examinations to be true. He did not assess the patients' credibility.

Additionally, Dr. Buch reviewed the Board's expert reviewer guidelines which provides that the standard of care requires a physician assistant to conduct himself in

a manner in which a reasonable provider would do in a similar circumstance. Dr. Buch also opined that the standard of care requires a "medical professional whether it be physician or physician's assistant [. . .] always behave in a professional manner and avoid any possible behavior that might be misinterpreted as sexual in nature."

### PATIENT A

23. Concerning respondent's examination of Patient A, Dr. Buch found Patient A complained of abdominal pain and nausea. The pain was located in the upper abdominal area which suggests the pain was located above the belly button. Respondent documented he performed a complete physical examination. Dr. Buch opined if Patient A had "pulled down her track pants so that the waistband went from hip bone to hip bone" as she reported doing, there would have been "adequate exposure of the entire abdomen for a complete examination of her abdomen to be performed." He added that, "[t]here would be no reason that the waistband of the sweatpants would have to be lifted to view the area below that which was already exposed."

24. Dr. Buch opined that respondent's conduct constituted an extreme departure from the standard of care because he engaged in physical conduct with Patient A when "[t]here is no reason that the area below the patient's waistband would have to be viewed to perform a complete physical examination."

### PATIENT B

25. Dr. Buch also opined respondent's examination of Patient B departed from the standard of care. Dr. Buch explained that at the time Patient B was evaluated by respondent she had been treated by Dr. Khan and undergone extensive evaluations and testing. The results of the testing were "essentially normal." When respondent

evaluated Patient B on September 5, 2018, she reported a history of "abdominal cramping, diarrhea, and constipation." Respondent's impression was that Patient B had constipation, abdominal pain, and weight loss. Respondent documented he performed a "complete physical examination." He also palpated the inguinal area lymph nodes.

26. Dr. Buch opined that the "inguinal lymph nodes can become abnormal with issues such as lower extremity infection, sexually transmitted disease, or malignancies involving either the skin of the lower extremity, cervix, vulva, skin of the trunk, rectum, anus and ovary." Patient B had already undergone "extensive evaluation" and based on "her repeated visits to her gastroenterologist previously, there would seem to be little reason to examine the inguinal lymph nodes." Dr. Buch also opined that it is not the standard of care to examine the inguinal lymph nodes as part of a gastrointestinal examination when a patient is complaining of abdominal pain.

However, if a provider needed to examine the inguinal area, the standard of care is to have the patient disrobe and place a drape over the patient's abdomen before examining the area. The provider would use his fingers to palpate the inguinal area to look for any abnormalities.

27. Additionally, Patient B reported that respondent had reached his hand down her pants, underneath her underwear on her right and left sides to the area just above the hip creases and very close to the skin area of her vagina. He also lifted her underwear exposing her pubic area. Dr. Buch opined that a reasonable physician assistant would not unzip a patient's pants and reach his hand underneath her underwear. Dr. Buch is not aware of any accepted procedure for a medical provider to put his hand on a woman's groin and move it down to the vaginal area as part of any examination.

28. Dr. Buch opined that respondent's conduct constituted an extreme departure from the standard of care because there is not an "appropriate explanation for any examination of the inguinal lymph nodes" or for lifting her underwear to view her groin area.

## Respondent's Evidence

29. Respondent testified at hearing and submitted evidence of awards, commendations, continuing education, and letters of support. Toni Harbison, a former Medical Assistant at the MMG Clinic and respondent's sister-in-law, also testified at hearing.

### RESPONDENT'S TESTIMONY

30. Although respondent has no independent recollection of Patient A and B or the examinations he performed, he denies engaging in any inappropriate conduct towards these patients. Respondent denied lifting Patient A's waistband to view her underwear or groin area. He also denied unbuttoning and unzipping Patient B's pants, reaching his hand down her pants and underwear, touching near her vagina, or lifting her underwear to view her groin area. Respondent contended it was not possible for him to touch Patient B's vaginal area while palpating her inguinal lymph nodes.

He described the patients' testimony at hearing as "heart-wrenching." Respondent believes Patient A's "conservative" beliefs affected her perspective about the examination he conducted. He is not sure why Patient B is making allegations against him because he "could never have done" what she has described.

31. Respondent admitted that if Patient A had placed her track pants where they needed to be for the examination there was no medical reason to lift the

waistband of her pants. He also admitted there is no medical reason to reach his hand down Patient B's pants or underwear, touch near her vaginal area, or lift her underwear to view her groin area.

32. Respondent contended that he only touches a patient for the purpose of completing a "bona fide examination." Respondent had no gastrointestinal training prior to working at the MMG Clinic. In 2009, when respondent was hired at the MMG Clinic, his supervising physician taught him how to perform a complete physical examination for new gastrointestinal patients. He was instructed that part of the examination should include palpating the inguinal lymph nodes. Respondent explained that based on this training he performs a complete physical examination on any patient he sees for the first time.

33. Respondent contends that other than Patients A and B, he has never had a patient complaint. He has worked in the medical profession since approximately 1994, when he joined the Air Force and worked as a medical technician. He obtained his Emergency Medical Technician (EMT) certification and worked in various positions in military hospitals including the surgical unit and internal medicine clinic. While in the Air Force and stationed on the "front line" of combat areas, respondent decided to obtain education and training to become a physician assistant.

While in the Air Force, respondent obtained his Associates Degree in Pre-Physician Assistant Studies. He then completed the Physician Assistant armed forces training program through the University of Nebraska. After completing the training program, he was stationed at Travis Air Force Base in California. In 2002, he obtained his license. In 2003, respondent was transferred to an Air Force Base in Florida. He worked as a staff physician assistant in a family practice clinic. He left the Air Force in

June 2005, after having received several commendations, including being named "Airman of the Year."

34. In 2006, respondent moved back to California. He worked as a physician assistant for a pharmaceutical company, until he was hired at Mercy in 2009. During his tenure at MMG Clinic, respondent started and managed the largest Hepatitis C treatment program in Northern California. The program has treated over 5000 patients, with a 98 percent cure rate. Respondent believes he made significant contributions to Mercy and the MMG Clinic.

35. Respondent contends that he has not felt "heard" by the Board or Mercy. After Patient A made a complaint, Mercy sent him an email about her allegations and asked respondent for a written response. Respondent provided a written response and denied lifting Patient A's waistband. Dr. Khan, who is Muslim, also spoke to respondent about Patient A's complaint. Dr. Khan shared with respondent about "cultural and ethnic considerations" when treating a female Muslim patient. He advised respondent to slow down his examination and take more time to explain to the patient what he is doing during the examination. Respondent contended that after his discussion with Dr. Khan, he changed his practice to incorporate Dr. Khan's recommendations.

36. Respondent contended that Mercy did not give him an opportunity to respond to Patient B's complaint. He was notified of the complaint and immediately terminated for conducting "inappropriate examinations." Respondent explained that his termination from the MMG Clinic "weighed heavily" on him. He took two months off work and did not know if he would go back to practicing medicine. He was angry that he was not able to respond to the complaints. This anger affected his family life. Eventually he began working as a physician assistant for the Department of

Corrections and Rehabilitation at the California Medical Facility. Respondent treats psychiatric patients at the facility.

37. Respondent has tried to address the patients' allegations by completing additional training. He obtained a certificate from a Professional Boundaries and Ethics Course. Respondent felt it was important for him to examine and identify the risks that contributed to the complaints. He provided the course trainer a copy of the Accusation. He also presented at the training what he believed happened at the examinations and what he thought occurred.

Respondent received feedback from the expert trainer who conducted the course. The trainer recommended that a chaperone be present for every patient visit whether the patient is male or female. The trainer also recommended respondent slow down his examinations and develop a "personal protection plan" to reduce risk factors. He has incorporated some of the recommendations from the course. The course made him "reflect deeply." He got angry at himself for making his patients feel uncomfortable. He also does not blame the patients and would like to apologize for how he made them feel.

38. Respondent explained that he "loves being a physician assistant." He would like to keep his license and plans on working as a physician assistant until he is 55 years old. He would then like to work in missionary medicine. Respondent stated that paying the Board's costs of investigation and prosecution would create significant hardship on his family. They currently live "paycheck to paycheck." Even paying the costs pursuant to a payment plan would not be possible.

### Toni Harbison Testimony and Letter

39. Toni Harbison is a medical assistant who worked with respondent at the MMG Clinic from 2011 until his termination in 2018. Ms. Harbison testified at hearing and signed a letter of support for respondent. Ms. Harbison was not assigned as respondent's medical assistant and never served as a chaperone for respondent while he conducted an examination. However, she had opportunities to observe respondent interact with patients. She described respondent as compassionate, friendly, helpful, and caring.

40. In 2013, Ms. Harbison introduced respondent to her sister-in-law because she thought they would be a "perfect match." Respondent married Ms. Harbison's sister-in-law. Ms. Harbison is aware respondent was terminated from his position at MMG Clinic. Despite the termination, Ms. Harbison believes respondent is not a risk to the public if he is allowed to continue to practice medicine.

### Letters of Support

41. Respondent submitted three additional letters of support from Corina Rumbaua, his medical assistant at the MMG Clinic, his wife, and his best friend. Ms. Rumbaua served as respondent's primary medical assistant from 2009 until 2017. During that time, she never witnessed respondent engage in any inappropriate conduct towards a patient. Respondent's wife and best friend describe respondent as caring and supportive.

## Analysis

42. Complainant seeks to revoke respondent's license for engaging in gross negligence, repeated act of negligence, and unprofessional conduct related to the care

and treatment of Patients A and B. Both patients testified at hearing regarding respondent's conduct. Respondent denies engaging in the conduct described by these patients. As a result, the credibility of the patients and respondent is paramount in determining the appropriate outcome of this matter.

43. Evidence Code section 780 sets forth factors to consider in determining the credibility of a witness: the demeanor and manner of the witness while testifying; the character of the testimony; the capacity to perceive at the time the events occurred; the character of the witness for honesty; the existence of bias or other motive; other statements of the witness that are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified; and the ]attitude of the witness toward the proceeding in which the testimony has been given.

The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Finally, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)]

44. The totality of the evidence in this matter supports the patients' versions of events. Patient A testified credibly at hearing about her examination and respondent's conduct in lifting the waistband of her pants to view her underwear and groin area. Patient A was distracted because respondent was talking throughout the examination. However, it was upon reflection after the examination that she

understood the gravity and inappropriateness of respondent's conduct. Patient A has a long history of gastrointestinal issues. She has undergone many abdominal examinations. As a result, she knew what to expect when respondent conducted her examination. It should not have included respondent lifting her waistband to view her underwear and groin area.

45. Patient B also credibly testified about respondent's conduct at her examination. Patient B was distracted answering questions when respondent unbuttoned and unzipped her pants, reached into her pants and underwear, touched the right and left sides of her groin area grazing her vagina area and then lifting her underwear to view her groin. It was not until Patient B stood up from the examination table that she realized what had occurred. She was embarrassed and afraid to discuss with anyone what had occurred. Patient B also had a long history of medical issues. She also knew what to expect during an examination. She had never had a similar experience.

Most significantly, neither of the patients made a hasty decision to report respondent's conduct to Mercy. Patient A spoke to her physician husband about what had occurred. He encouraged her to report respondent's conduct. Likewise, Patient B spoke to her grandmother about the incident. She was also encouraged to report what had occurred. Additionally, both patients continue to be affected by respondent's conduct. The emotional impact of respondent's conduct was evident during their testimony. Respondent betrayed their trust and it has affected their choices of medical providers.

46. In contrast, respondent's testimony was not credible. While respondent has little recollection of the patients and no independent recollection of the examinations, he denied engaging in the conduct the patients described. Respondent

contended his custom and practice is to conduct a complete physical examination that includes palpation of the horizontal inguinal lymph nodes. Respondent contends he completed such examinations on the patients and that it would not have been possible to touch Patient B's vaginal area while palpating her inguinal lymph nodes. He attributed Patient A's version of events to her religious views.

However, respondent admitted there would be no medical reason to lift the waistband of her pants. He also admitted there is no medical reason to reach his hand down Patient B's pants or underwear, touch near her vaginal area, or lift her underwear to view her groin area.

47. Dr. Buch provided the only expert testimony at hearing. He persuasively opined that the standard of care requires a physician assistant to conduct himself in a manner in which a reasonable provider would do in a similar circumstance and that a "medical professional whether it be physician or physician's assistant [. . .] always behave in a professional manner and avoid any possible behavior that might be misinterpreted as sexual in nature."

48. Dr. Buch also persuasively opined that respondent's conduct concerning Patient A constitutes an extreme departure from the standard of care. There is no reason that the area below Patient A's waistband would have to be viewed to perform a complete physical examination. Respondent engaged in conduct towards Patient A that was interpreted as sexual in nature.

Additionally, respondent's conduct concerning Patient B also constitutes an extreme departure from the standard of care. Dr. Buch persuasively opined that a reasonable physician assistant would not unzip a patient's pants and reach his hand underneath her underwear. There is no accepted procedure for a medical provider to

put his hand on a woman's groin and move it down to the vaginal area as part of any examination. Additionally, there is no appropriate explanation for lifting her underwear to view her groin area. Respondent engaged in conduct toward Patient B that was interpreted as sexual in nature.

49. When all the evidence is considered, complainant established by clear and convincing evidence that respondent engaged in gross negligence, repeated acts of negligence, and unprofessional conduct. While respondent has no history of discipline and has made attempts to receive training, his denial of any wrongdoing or failure to accept responsibility for his conduct makes revocation of his license necessary to protect the public health, safety, and welfare.

## Costs

50. Pursuant to Business and Professions Code section 125.3, complainant requested that respondent be ordered to reimburse the Board for the reasonable costs of the investigation and adjudication of the case. Complainant submitted a Declaration of the Deputy Attorney General with an attached computer printout that lists the amounts charged by the Attorney General's Office by time, date, and task. The Declaration and computer printout show that the Attorney General's Office billed the Board $30,833.75 for prosecuting the case. Complainant also submitted a certification of investigation cost totaling $4,005.50. These costs, totaling $34,839.25, are reasonable in light of the allegations made in this matter.

## LEGAL CONCLUSIONS

### Burden of Proof

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation and must do so by clear and convincing evidence. (See, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.app.3d 853, 856.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (See, *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

### Applicable Law

2. Pursuant to Business and Professions Code section 2227, a licensee who is found guilty under the Medical Practice Act may have his license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

3. Pursuant to Business and Professions Code section 3527, subdivision (a), the Board may discipline the license of a licensee who engages in "unprofessional conduct" in violation of the Physician Assistant Practice Act (Bus. Prof. Code, § 3500 et seq.), the Medical Practices Act (Bus. & Prof. Code, § 2000 et seq.), the Board's regulations, and the regulations of the Medical Board of California.

4. Business and Professions Code section 2234, in relevant part, provides:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other

provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

5. Gross negligence requires a showing of want of even slight care, but not necessarily involving wanton or willful misconduct; in other words, an extreme

departure from the ordinary standard of care. (*Gore v. Board of Medical Quality Assurance* (1980) 110 Cal.App.3d 184, 198; *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753-754.)

## Cause for Discipline

6. As set forth in Factual Findings 4 through 28 and 42 through 49, complainant established by clear and convincing evidence that respondent's care and treatment of Patients A and B constitutes gross negligence. As a result, cause for discipline of respondent's license exists pursuant to Business and Professions Code sections 2234, subdivision (b), and 3527.

7. As set forth in Factual Findings 4 through 28 and 42 through 49, complainant established by clear and convincing evidence that respondent's care and treatment of Patients A and B constitutes repeated acts of negligence. As a result, cause for discipline of respondent's license exists pursuant to Business and Professions Code sections 2234, subdivision (c), and 3527.

8. As set forth in Factual Findings 4 through 28 and 42 through 49, complainant established by clear and convincing evidence that respondent's care and treatment of Patients A and B constitutes unprofessional conduct. As a result, cause for discipline of respondent's license exists pursuant to Business and Professions Code sections 2227, 2234, and 3527.

9. As set forth in the Factual Findings as a whole, when all the evidence is considered, to protect the health, safety, or welfare of the public, respondent's license must be revoked.

## Cost Recovery

10. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

11. Here, the scope of the investigation was appropriate to the alleged misconduct. Respondent was not successful at hearing in having charges dismissed or reduced. He had no colorable challenge to license revocation. However, respondent's income will likely be affected as a result of the revocation of his license. Although respondent did not establish a basis to reduce or eliminate the costs in this matter, in the event respondent's license is reinstated, he should be able to pay the costs imposed, in installments.

## ORDER

1. Physician Assistant License No. PA 16404 issued to Clayton Rector, is REVOKED.

2. In the event respondent's license is reinstated, respondent shall pay the Board or its designee $34,839.25 in an installment plan approved by the Board or its designee.

This Decision shall become effective on December 21, 2022.

IT IS SO ORDERED this 21 day of November, 2022.

Juan Armenta, President
Physician Assistant Board

**BEFORE THE**
**PHYSICIAN ASSISTANT BOARD**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

| | |
|---|---|
| In the Matter of the Accusation against: ) | Case No. 950-2018-002094 |
| ) | |
| **CLAYTON T. RECTOR, P.A.** ) | OAH No. 2021090590 |
| ) | |
| ) | |
| Respondent. ) | |

## ORDER OF REJECTION OF PROPOSED DECISION

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge, dated April 18, 2022, in the above-entitled matter is rejected. The Physician Assistant Board (Board) will decide the case upon the record, including the transcript of the hearing held on March 14 through 17, 2022, and upon such written argument as the parties may wish to submit. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED this 12th day of May, 2022.

Juan Armenta, President
Physician Assistant Board

# BEFORE THE
# PHYSICIAN ASSISTANT BOARD
# DEPARTMENT OF CONSUMER AFFAIRS
# STATE OF CALIFORNIA

## In the Matter of the Accusation Against:

## CLAYTON T. RECTOR, P.A., Respondent

## Case No. 950-2018-002094

## OAH No. 2021090590

## PROPOSED DECISION

Marcie Larson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on March 14 through 17, 2022, from Sacramento, California.

Ryan McEwan, Deputy Attorney General, represented complainant Rozana Khan, Executive Officer of the Physician Assistant Board (Board), Department of Consumer Affairs (Department).

Nichole Hendrickson, Attorney at Law, represented respondent Clayton Rector, who appeared at the hearing.

Evidence was received, the record closed, and the matter was submitted for decision on March 17, 2022.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. On or about May 14, 2002, the Board issued respondent Physician Assistant License No. PA 16404 (license). Respondent's license was in full force and effect at all times relevant to the charges set forth in the Accusation, and will expire on March 31, 2022, unless renewed or revoked.

2. On June 17, 2021, complainant, acting in her official capacity, signed and thereafter filed an Accusation against respondent. Complainant seeks to impose discipline on respondent's license based upon his alleged gross negligence, repeated acts of negligence, and unprofessional conduct related to the examinations of two female patients.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

### Background and Patient Complaints

4. In June 2009, respondent was hired as a physician assistant for the Mercy Medical Group (Mercy), in Sacramento, California. Respondent worked in the Mercy Medical Group Gastroenterology Clinic (MMG Clinic). Respondent's duties included providing care and treatment to patients with gastrointestinal issues. He also ran the Hepatitis C and inflammatory bowel treatment programs. In 2018, there were eight to ten physicians working at the MMG Clinic. Rana Khan, M.D. was respondent's

supervising physician. Respondent was the only physician assistant. On a typical day, respondent would see approximately 20 patients.

## PATIENT A COMPLAINT

5. Patient A is a 37-year-old, college educated, married mother of three young children. Patient A testified at hearing. Patient A had an eight-year history of gastrointestinal issues. Patient A had been living in Oregon while her husband attended medical school and completed his residency program. Patient A received treatment for her gastrointestinal issues while living in Oregon. In 2016, Patient A and her family moved to Sacramento. Patient A continued to have gastrointestinal issues and needed an endoscopy procedure performed. She made an appointment at the MMG Clinic to obtain a referral for the endoscopy procedure.

6. On or about January 24, 2018, Patient A arrived at the MMG Clinic for an initial visit. She was told respondent would be her provider. Patient A was taken to an examination room by a medical assistant. Respondent then entered the examination room. Respondent and Patient A were the only people in the room. Patient A was not offered a chaperone. Respondent asked Patient A questions about her medical history and symptoms. Patient A told respondent she had symptoms on an off for eight years. At times her discomfort required a visit to the emergency room and she would be placed on medication. Patient A reported that her current symptoms included pain in the upper abdomen along her rib cage. She told respondent that she was planning to undergo an upper endoscopy while living in Oregon but was unable to do so. She asked respondent for a referral so that she could have the procedure.

7. Respondent asked Patient A if he could perform an abdominal examination. She agreed. Patient A had undergone many abdominal examinations and

was familiar with the process. Patient A laid on the examination table, rolled up her long sweater and tucked it under her bra. She then lowered her elastic waistband track pants to above her pubic bone so that her abdomen was exposed. Her hip bones were covered by the waistband of her track pants. Respondent then palpated Patient A's abdomen and asked her where the pain was located and if she was feeling any discomfort with the palpation. Patient A indicated where in her abdomen the pain was located. Respondent continued to ask Patient A questions as he palpated her abdomen, including how often she experienced pain.

While conversing with respondent as he performed the examination, Patient A felt respondent lift the waistband of her pants up for a few seconds exposing her underwear and pubic area. He then lowered her waistband back down. Patient A was unable to see how high respondent lifted her waistband. However, she thought it was odd because respondent did not explain what he was doing or what he was looking for when he lifted her waistband. Patient A had not complained of any pain in her pelvic or pubic area. Patient A was uncomfortable with respondent's conduct. However, she was preoccupied because she was in mid-conversation with respondent when he lifted her waistband, so she did not ask respondent why he lifted her waistband.

8. Respondent finished the examination. Patient A sat up and moved to a chair in the examination room. Respondent told Patient A that he would put in an order for an upper endoscopy. Respondent documented that he performed a complete physical examination. Prior to Patient A leaving the examination room, respondent mentioned something about God, which Patient A also thought was odd. Patient A practices Islam and her head was covered with a scarf.

9. After Patient A went home, she continued to reflect on respondent's conduct and her past abdominal examinations. Patient A's past medical providers had asked her permission to adjust her waistband if that was needed to perform the examination. Respondent had not. Patient A spoke to her husband and a cousin about respondent's conduct. Patient A's husband suggested she call the MMG Clinic and speak to the head physician to find out if respondent's conduct was consistent with how examinations were performed.

10. On January 25, 2018, Patient A called the MMG Clinic and requested to speak to the head physician. Patient A was connected to the office manager. Patient A left her telephone number. Her call was not returned so she left another message with details about what had occurred during her examination. After approximately one week, Patient A still did not receive a return call from the MMG Clinic. Patient A then called the Mercy patient satisfaction line and spoke with a Mercy employee. Patient A explained to the employee that she was trying to reach someone from the MMG Clinic concerning her experience with respondent.

The employee informed Patient A that she would contact the MMG Clinic office manager. Within 30 minutes, Patient A received a call from William Walker, a manager for Mercy. He asked Patient A to explain what occurred during her examination with respondent. Patient A provided Mr. Walker with the information he requested. Mr. Walker told Patient A that he would look into the incident. Patient A never received any information regarding the outcome of her complaint.

11. Patient A never saw respondent again. Since the incident she no longer wants to be treated by male medical providers. She has elected to have female medical providers when available. She has also become anxious about being placed under sedation because she is unsure about the people Mercy has hired. Her trust in

the health community has also been affected. Patient A does not know Patient B and has never spoken to her about respondent.

### PATIENT B COMPLAINT

12. Patient B is a 39-year-old married mother with a history of gastrointestinal complaints and other medical issues. Patient B testified at hearing. Starting in 2015, Patient B began seeing Dr. Khan at the MMG Clinic for her gastrointestinal complaints. Patient B had undergone extensive evaluations concerning her complaints, including laboratory tests, a colonoscopy, an endoscopy, ultrasound, a computerized tomography (CT scan), a hepatobiliary (HIDA) scan, gastric emptying, a stool study, Sitzmarks exam, and other upper gastrointestinal and small bowel testing.

13. On or about August 9, 2018, Patient B was evaluated by Dr. Khan for abdominal pain. Dr. Khan noted that the pain might be related to intestinal spasm or constipation. Dr. Khan spoke to Patient B about obtaining approval for a capsule endoscopy to further evaluate her complaints. Patient B scheduled an appointment at the MMG Clinic for September 5, 2018, to obtain an order for the capsule endoscopy.

14. On September 5, 2018, Patient B was evaluated by respondent at the MMG Clinic. Patient B had not been treated by respondent prior to this visit. Patient B was taken to an examination room by a medical assistant, who also took her vital signs. The medical assistant left the room and respondent entered. Patient B was not offered a chaperone. Respondent asked Patient B the reason for the visit. Patient B provided respondent information regarding her complaints and request for a capsule endoscopy.

Respondent documented the reason for the visit was "[f]ollow-up regarding abdominal pain and changes in stools." He also documented that she complained of

weight loss. Patient B explained to respondent that her pain was from just below her belly button to the upper part of her abdomen. She did not complain of groin or pelvic pain.

Respondent asked Patient B if he could examine the upper part of her abdomen. Patient B agreed. Patient B was wearing jeans and a shirt. Respondent asked Patient B to lay on the examination table so he could perform an abdominal examination. Patient B laid on the examination table and tucked her shirt under her bra to expose her abdomen. Patient B did not lower the waistband of her jeans. Respondent then palpated her abdomen and asked Patient B questions.

At one point during the examination, respondent stated words to the effect of "let me see something." Without permission, he unbuttoned and unzipped Patient B's pants. He then reached his hand down her pants and underneath her underwear. He then touched the right-side hip crease and then grazed her vaginal lip area as he moved his hand to touch the left-side hip crease. Respondent then lifted Patient B's underwear exposing her pubic area. He quickly looked at the pubic area and then lowered her underwear. Respondent was talking during this part of the examination but did not tell Patient B what he was doing or why he was examining this area of her body.

After respondent let go of Patient B's underwear, he said that he would work on getting the paperwork submitted for the capsule endoscopy. He then left the room. Respondent documented he performed a complete physical examination. After respondent left the examination room, Patient B stood up and realized she had to zip up her pants and "she did not feel good." Patient B had to pick up her children from school and take a flight to Arizona to attend her aunt's funeral, so she had not fully

processed what had occurred during her examination. She had never had that experience with another medical provider.

15. Later the same day while flying to Arizona, Patient B spoke to her grandmother about what had occurred during her examination. Her grandmother encouraged her to report what had occurred. Patient B initially did not want to tell anyone because she was embarrassed. However, after reflection, she decided to make a complaint. On September 13, 2018, Patient B spoke to Mr. Walker and describe respondent's conduct during her examination. Patient B was eventually informed by Mercy that her complaint had been addressed, but she was not provided any details.

16. Patient B has continued to receive treatment at MMG Clinic. However, she has not seen respondent since her September 5, 2018 appointment. Patient B is now treated by female providers when possible because she is no longer comfortable with male providers. The incident with respondent has continued to affect Patient B. She has anxiety when dealing with medical providers and she is angry about the incident. Patient B does not know Patient A and has never spoken to her about respondent.

## Complaints Investigation

17. On September 26, 2018, respondent was terminated from his position with Mercy. Thereafter, Mercy filed a "Health Facility/Peer Review Reporting Form" with the Medical Board Central Complaint Unit stating respondent had been terminated from his position. The notification prompted the Board to investigate the patient complaints. Sean Cogan, an investigator with the Department's Division of Investigation was assigned to investigate the complaints. Mr. Cogan interviewed respondent and the patients. Mr. Cogan prepared an investigation report.

18. On July 17, 2020, respondent was interviewed by Mr. Cogan and Howard Slyter, M.D., District Medical Consultant. Respondent was represented by counsel. Dr. Slyter asked respondent about his customs and practice when examining patients complaining of abdominal pain. Respondent explained that he examined patients while they were wearing their street clothes. If he conducts an abdominal examination, he has the patient lay down, lift up their top to the bottom of their rib cage and position the waistband of their pants at their hip bones. Respondent also stated that "100 percent of the time" he had a chaperone present if he was examining a patient's "genitalia or sensitive areas."

19. Mr. Cogan and Dr. Slyter asked respondent if he recalled examining Patients A and B. Respondent had limited recollection of both patients. He recalled that the patients were added on to his schedule and that he had never treated the patients. Based on his review of Patient A's record, she had requested an appointment for persistent and worsening abdominal pain. Patient A had never been seen at the MMG Clinic. Respondent recalled Patient A was of "Middle Eastern descent" and wore a head covering. After obtaining a history from Patient A, he asked her to lay down on the examining table, lift her top to her ribs and lower her pants to her lower hip area.

Respondent conducted an abdominal examination which included auscultating and palpitating the right and left upper and lower quadrants of the abdomen. During palpation respondent looked for signs of pain. Respondent stated that he would not have lifted the waistband of Patient A's track pants and looked at her underwear and genital area. Respondent did not offer to have a chaperone present because he did not touch or evaluate Patient A's genitalia or sensitive areas.

20. Based on respondent's review of Patient B's medical records for September 5, 2018, respondent conducted an abdominal examination that included

auscultating and palpitating the right and left upper and lower quadrants of the abdomen. During palpation respondent looked for signs of pain. Respondent also stated that his examinations include inspecting and palpating the lymph nodes, including the horizontal inguinal nodes area near the groin and hip bones, to check for abnormalities. Respondent stated that it was his customary practice to check the inguinal lymph nodes on any patient complaining of abdominal pain.

Respondent denied that he unzipped or unbuttoned Patient B's pants. He did not recall reaching into her pants or underwear. Respondent contended he was able to palpate the inguinal lymph nodes without placing his hands down her pants. Respondent did not offer to have a chaperone present because he did not see, touch, expose or examine genitalia or sensitive areas.

## Expert Opinion

21. Kenneth Buch, M.D., testified as an expert witness on behalf of complainant. In 1978, Dr. Buch obtained his medical degree from Cornell Medical College. From 1978 until 1981, he completed his internship and residency in internal medicine at the Albany Medical Center Hospital. In 1981, Dr. Buch obtained his California medical license. From 1981 until 1983, he completed a fellowship at the University of California Los Angeles (UCLA) Wadsworth Veteran's Administration Gastroenterology Training Program. Dr. Buch is a Diplomate of the American Board of Internal Medicine and American Board of Gastroenterology.

Since 1983, Dr. Buch has operated a Gastroenterology private practice. He has also served as a Clinical Instructor and Assistant Clinical Professor at UCLA, teaching the fundamentals of clinical medicine to third year medical students. Dr. Buch has

served as an expert for the California Medical Board, reviewing more than 30 cases. This is the first case he has reviewed for the Board.

22. On February 16, 2021, following a referral from the Division of Investigation, Dr. Buch authored a report concerning his evaluation of respondent's conduct related to his examinations of Patients A and B. In his report, Dr. Buch listed the documents he reviewed to reach his opinions and conclusions, including Patient A and B's statements and medical records, the Board's investigation report, and respondent's Board interview. Dr. Buch considered the statements provided by Patients A and B concerning respondent's conduct during their examinations to be true. He did not assess the patients' credibility.

Additionally, Dr. Buch reviewed the Board's expert reviewer guidelines which provides that the standard of care requires a physician assistant to conduct himself in a manner in which a reasonable provider would do in a similar circumstance. Dr. Buch also opined that the standard of care requires a "medical professional whether it be physician or physician's assistant [. . .] always behave in a professional manner and avoid any possible behavior that might be misinterpreted as sexual in nature."

**PATIENT A**

23. Concerning respondent's examination of Patient A, Dr. Buch found Patient A complained of abdominal pain and nausea. The pain was located in the upper abdominal area which suggests the pain was located above the belly button. Respondent documented he performed a complete physical examination. Dr. Buch opined if Patient A had "pulled down her track pants so that the waistband went from hip bone to hip bone" as she reported doing, there would have been "adequate exposure of the entire abdomen for a complete examination of her abdomen to be

performed." He added that, "[t]here would be no reason that the waistband of the sweatpants would have to be lifted to view the area below that which was already exposed."

24. Dr. Buch opined that respondent's conduct constituted an extreme departure from the standard of care because he engaged in physical conduct with Patient A when "[t]here is no reason that the area below the patient's waistband would have to be viewed to perform a complete physical examination."

**PATIENT B**

25. Dr. Buch also opined respondent's examination of Patient B departed from the standard of care. Dr. Buch explained that at the time Patient B was evaluated by respondent she had been treated by Dr. Khan and undergone extensive evaluations and testing. The results of the testing were "essentially normal." When respondent evaluated Patient B on September 5, 2018, she reported a history of "abdominal cramping, diarrhea, and constipation." Respondent's impression was that Patient B had constipation, abdominal pain, and weight loss. Respondent documented he performed a "complete physical examination." He also palpated the inguinal area lymph nodes.

26. Dr. Buch opined that the "inguinal lymph nodes can become abnormal with issues such as lower extremity infection, sexually transmitted disease, or malignancies involving either the skin of the lower extremity, cervix, vulva, skin of the trunk, rectum, anus and ovary." Patient B had already undergone "extensive evaluation" and based on "her repeated visits to her gastroenterologist previously, there would seem to be little reason to examine the inguinal lymph nodes." Dr. Buch also opined that it is not the standard of care to examine the inguinal lymph nodes as

part of a gastrointestinal examination when a patient is complaining of abdominal pain.

However, if a provider needed to examine the inguinal area, the standard of care is to have the patient disrobe and place a drape over the patient's abdomen before examining the area. The provider would use his fingers to palpate the inguinal area to look for any abnormalities.

27. Additionally, Patient B reported that respondent had reached his hand down her pants, underneath her underwear on her right and left sides to the area just above the hip creases and very close to the skin area of her vagina. He also lifted her underwear exposing her pubic area. Dr. Buch opined that a reasonable physician assistant would not unzip a patient's pants and reach his hand underneath her underwear. Dr. Buch is not aware of any accepted procedure for a medical provider to put his hand on a woman's groin and move it down to the vaginal area as part of any examination.

28. Dr. Buch opined that respondent's conduct constituted an extreme departure from the standard of care because there is not an "appropriate explanation for any examination of the inguinal lymph nodes" or for lifting her underwear to view her groin area.

## Respondent's Evidence

29. Respondent testified at hearing and submitted evidence of awards, commendations, continuing education, and letters of support. Toni Harbison, a former Medical Assistant at the MMG Clinic and respondent's sister-in-law, also testified at hearing.

## RESPONDENT'S TESTIMONY

30. Although respondent has no independent recollection of Patient A and B or the examinations he performed, he denies engaging in any inappropriate conduct towards these patients. Respondent denied lifting Patient A's waistband to view her underwear or groin area. He also denied unbuttoning and unzipping Patient B's pants, reaching his hand down her pants and underwear, touching near her vagina, or lifting her underwear to view her groin area. Respondent contended it was not possible for him to touch Patient B's vaginal area while palpating her inguinal lymph nodes.

He described the patients' testimony at hearing as "heart-wrenching." Respondent believes Patient A's "conservative" beliefs affected her perspective about the examination he conducted. He is not sure why Patient B is making allegations against him because he "could never have done" what she has described.

31. Respondent admitted that if Patient A had placed her track pants where they needed to be for the examination there was no medical reason to lift the waistband of her pants. He also admitted there is no medical reason to reach his hand down Patient B's pants or underwear, touch near her vaginal area, or lift her underwear to view her groin area.

32. Respondent contended that he only touches a patient for the purpose of completing a "bona fide examination." Respondent had no gastrointestinal training prior to working at the MMG Clinic. In 2009, when respondent was hired at the MMG Clinic, his supervising physician taught him how to perform a complete physical examination for new gastrointestinal patients. He was instructed that part of the examination should include palpating the inguinal lymph nodes. Respondent

explained that based on this training he performs a complete physical examination on any patient he sees for the first time.

33. Respondent contends that other than Patients A and B, he has never had a patient complaint. He has worked in the medical profession since approximately 1994, when he joined the Air Force and worked as a medical technician. He obtained his Emergency Medical Technician (EMT) certification and worked in various positions in military hospitals including the surgical unit and internal medicine clinic. While in the Air Force and stationed on the "front line" of combat areas, respondent decided to obtain education and training to become a physician assistant.

While in the Air Force, respondent obtained his Associates Degree in Pre-Physician Assistant Studies. He then completed the Physician Assistant armed forces training program through the University of Nebraska. After completing the training program, he was stationed at Travis Air Force Base in California. In 2002, he obtained his license. In 2003, respondent was transferred to an Air Force Base in Florida. He worked as a staff physician assistant in a family practice clinic. He left the Air Force in June 2005, after having received several commendations, including being named "Airman of the Year."

34. In 2006, respondent moved back to California. He worked as a physician assistant for a pharmaceutical company, until he was hired at Mercy in 2009. During his tenure at MMG Clinic, respondent started and managed the largest Hepatitis C treatment program in Northern California. The program has treated over 5000 patients, with a 98 percent cure rate. Respondent believes he made significant contributions to Mercy and the MMG Clinic.

35. Respondent contends that he has not felt "heard" by the Board or Mercy. After Patient A made a complaint, Mercy sent him an email about her allegations and asked respondent for a written response. Respondent provided a written response and denied lifting Patient A's waistband. Dr. Khan, who is Muslim, also spoke to respondent about Patient A's complaint. Dr. Khan shared with respondent about "cultural and ethnic considerations" when treating a female Muslim patient. He advised respondent to slow down his examination and take more time to explain to the patient what he is doing during the examination. Respondent contended that after his discussion with Dr. Khan, he changed his practice to incorporate Dr. Khan's recommendations.

36. Respondent contended that Mercy did not give him an opportunity to respond to Patient B's complaint. He was notified of the complaint and immediately terminated for conducting "inappropriate examinations." Respondent explained that his termination from the MMG Clinic "weighed heavily" on him. He took two months off work and did not know if he would go back to practicing medicine. He was angry that he was not able to respond to the complaints. This anger affected his family life. Eventually he began working as a physician assistant for the Department of Corrections and Rehabilitation at the California Medical Facility. Respondent treats psychiatric patients at the facility.

37. Respondent has tried to address the patients' allegations by completing additional training. He obtained a certificate from a Professional Boundaries and Ethics Course. Respondent felt it was important for him to examine and identify the risks that contributed to the complaints. He provided the course trainer a copy of the Accusation. He also presented at the training what he believed happened at the examinations and what he thought occurred.

Respondent received feedback from the expert trainer who conducted the course. The trainer recommended that a chaperone be present for every patient visit whether the patient is male or female. The trainer also recommended respondent slow down his examinations and develop a "personal protection plan" to reduce risk factors. He has incorporated some of the recommendations from the course. The course made him "reflect deeply." He got angry at himself for making his patients feel uncomfortable. He also does not blame the patients and would like to apologize for how he made them feel.

38. Respondent explained that he "loves being a physician assistant." He would like to keep his license and plans on working as a physician assistant until he is 55 years old. He would then like to work in missionary medicine. Respondent stated that paying the Board's costs of investigation and prosecution would create significant hardship on his family. They currently live "paycheck to paycheck." Even paying the costs pursuant to a payment plan would not be possible.

### TONI HARBISON TESTIMONY AND LETTER

39. Toni Harbison is a medical assistant who worked with respondent at the MMG Clinic from 2011 until his termination in 2018. Ms. Harbison testified at hearing and signed a letter of support for respondent. Ms. Harbison was not assigned as respondent's medical assistant and never served as a chaperone for respondent while he conducted an examination. However, she had opportunities to observe respondent interact with patients. She described respondent as compassionate, friendly, helpful, and caring.

40. In 2013, Ms. Harbison introduced respondent to her sister-in-law because she thought they would be a "perfect match." Respondent married Ms. Harbison's

sister-in-law. Ms. Harbison is aware respondent was terminated from his position at MMG Clinic. Despite the termination, Ms. Harbison believes respondent is not a risk to the public if he is allowed to continue to practice medicine.

### LETTERS OF SUPPORT

41. Respondent submitted three additional letters of support from Corina Rumbaua, his medical assistant at the MMG Clinic, his wife, and his best friend. Ms. Rumbaua served as respondent's primary medical assistant from 2009 until 2017. During that time, she never witnessed respondent engage in any inappropriate conduct towards a patient. Respondent's wife and best friend describe respondent as caring and supportive.

## Analysis

42. Complainant seeks to revoke respondent's license for engaging in gross negligence, repeated act of negligence, and unprofessional conduct related to the care and treatment of Patients A and B. Both patients testified at hearing regarding respondent's conduct. Respondent denies engaging in the conduct described by these patients. As a result, the credibility of the patients and respondent is paramount in determining the appropriate outcome of this matter.

43. Evidence Code section 780 sets forth factors to consider in determining the credibility of a witness: the demeanor and manner of the witness while testifying; the character of the testimony; the capacity to perceive at the time the events occurred; the character of the witness for honesty; the existence of bias or other motive; other statements of the witness that are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified; and the attitude of the witness toward the proceeding in which the testimony has been given.

The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Finally, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)]

44. The totality of the evidence in this matter supports the patients' versions of events. Patient A testified credibly at hearing about her examination and respondent's conduct in lifting the waistband of her pants to view her underwear and groin area. Patient A was distracted because respondent was talking throughout the examination. However, it was upon reflection after the examination that she understood the gravity and inappropriateness of respondent's conduct. Patient A has a long history of gastrointestinal issues. She has undergone many abdominal examinations. As a result, she knew what to expect when respondent conducted her examination. It should not have included respondent lifting her waistband to view her underwear and groin area.

45. Patient B also credibly testified about respondent's conduct at her examination. Patient B was distracted answering questions when respondent unbuttoned and unzipped her pants, reached into her pants and underwear, touched the right and left sides of her groin area grazing her vagina area and then lifting her underwear to view her groin. It was not until Patient B stood up from the examination table that she realized what had occurred. She was embarrassed and afraid to discuss

with anyone what had occurred. Patient B also had a long history of medical issues. She also knew what to expect during an examination. She had never had a similar experience.

Most significantly, neither of the patients made a hasty decision to report respondent's conduct to Mercy. Patient A spoke to her physician husband about what had occurred. He encouraged her to report respondent's conduct. Likewise, Patient B spoke to her grandmother about the incident. She was also encouraged to report what had occurred. Additionally, both patients continue to be affected by respondent's conduct. The emotional impact of respondent's conduct was evident during their testimony. Respondent betrayed their trust and it has affected their choices of medical providers.

46. In contrast, respondent's testimony was not credible. While respondent has little recollection of the patients and no independent recollection of the examinations, he denied engaging in the conduct the patients described. Respondent contended his custom and practice is to conduct a complete physical examination that includes palpation of the horizontal inguinal lymph nodes. Respondent contends he completed such examinations on the patients and that it would not have been possible to touch Patient B's vaginal area while palpating her inguinal lymph nodes. He attributed Patient A's version of events to her religious views.

However, respondent admitted there would be no medical reason to lift the waistband of her pants. He also admitted there is no medical reason to reach his hand down Patient B's pants or underwear, touch near her vaginal area, or lift her underwear to view her groin area.

47. Dr. Buch provided the only expert testimony at hearing. He persuasively opined that the standard of care requires a physician assistant to conduct himself in a manner in which a reasonable provider would do in a similar circumstance and that a "medical professional whether it be physician or physician's assistant [. . .] always behave in a professional manner and avoid any possible behavior that might be misinterpreted as sexual in nature."

48. Dr. Buch also persuasively opined that respondent's conduct concerning Patient A constitutes an extreme departure from the standard of care. There is no reason that the area below Patient A's waistband would have to be viewed to perform a complete physical examination. Respondent engaged in conduct towards Patient A that was interpreted as sexual in nature.

Additionally, respondent's conduct concerning Patient B also constitutes an extreme departure from the standard of care. Dr. Buch persuasively opined that a reasonable physician assistant would not unzip a patient's pants and reach his hand underneath her underwear. There is no accepted procedure for a medical provider to put his hand on a woman's groin and move it down to the vaginal area as part of any examination. Additionally, there is no appropriate explanation for lifting her underwear to view her groin area. Respondent engaged in conduct toward Patient B that was interpreted as sexual in nature.

49. When all the evidence is considered, complainant established by clear and convincing evidence that respondent engaged in gross negligence, repeated acts of negligence, and unprofessional conduct. While respondent has no history of discipline and has made attempts to receive training, his denial of any wrongdoing or failure to accept responsibility for his conduct makes revocation of his license necessary to protect the public health, safety, and welfare.

## Costs

50. Pursuant to Business and Professions Code section 125.3, complainant requested that respondent be ordered to reimburse the Board for the reasonable costs of the investigation and adjudication of the case. Complainant submitted a Declaration of the Deputy Attorney General with an attached computer printout that lists the amounts charged by the Attorney General's Office by time, date, and task. The Declaration and computer printout show that the Attorney General's Office billed the Board $30,833.75 for prosecuting the case. Complainant also submitted a certification of investigation cost totaling $4,005.50. These costs, totaling $34,839.25, are reasonable in light of the allegations made in this matter.

# LEGAL CONCLUSIONS

## Burden of Proof

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation and must do so by clear and convincing evidence. (See, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.app.3d 853, 856.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (See, *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

## Applicable Law

2. Pursuant to Business and Professions Code section 2227, a licensee who is found guilty under the Medical Practice Act may have his license revoked, suspended for a period not to exceed one year, placed on probation and required to

pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

3. Pursuant to Business and Professions Code section 3527, subdivision (a), the Board may discipline the license of a licensee who engages in "unprofessional conduct" in violation of the Physician Assistant Practice Act (Bus. Prof. Code, § 3500 et seq.), the Medical Practices Act (Bus. & Prof. Code, § 2000 et seq.), the Board's regulations, and the regulations of the Medical Board of California.

4. Business and Professions Code section 2234, in relevant part, provides:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

5. Gross negligence requires a showing of want of even slight care, but not necessarily involving wanton or willful misconduct; in other words, an extreme departure from the ordinary standard of care. (*Gore v. Board of Medical Quality Assurance* (1980) 110 Cal.App.3d 184, 198; *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753-754.)

## Cause for Discipline

6. As set forth in Factual Findings 4 through 28 and 42 through 49, complainant established by clear and convincing evidence that respondent's care and treatment of Patients A and B constitutes gross negligence. As a result, cause for discipline of respondent's license exists pursuant to Business and Professions Code sections 2234, subdivision (b), and 3527.

7. As set forth in Factual Findings 4 through 28 and 42 through 49, complainant established by clear and convincing evidence that respondent's care and treatment of Patients A and B constitutes repeated acts of negligence. As a result,

cause for discipline of respondent's license exists pursuant to Business and Professions Code sections 2234, subdivision (c), and 3527.

8. As set forth in Factual Findings 4 through 28 and 42 through 49, complainant established by clear and convincing evidence that respondent's care and treatment of Patients A and B constitutes unprofessional conduct. As a result, cause for discipline of respondent's license exists pursuant to Business and Professions Code sections 2227, 2234, and 3527.

9. As set forth in the Factual Findings as a whole, when all the evidence is considered, to protect the health, safety, or welfare of the public, respondent's license must be revoked.

## Cost Recovery

10. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

11. Here, the scope of the investigation was appropriate to the alleged misconduct. Respondent was not successful at hearing in having charges dismissed or

reduced. He had no colorable challenge to license revocation. However, respondent's income will likely be affected as a result of the revocation of his license. Although respondent did not establish a basis to reduce or eliminate the costs in this matter, in the event respondent's license is reinstated, he should be able to pay the costs imposed, in installments.

## ORDER

1. Physician Assistant License No. PA 16404 issued to Clayton Rector, is REVOKED.

2. In the event respondent's license is reinstated, respondent shall pay the Board or its designee $34,839.25 in an installment plan approved by the Board or its designee.

DATE: April 18, 2022

Marcie Larson
Marcie Larson (Apr 18, 2022 10:53 PDT)

MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings

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**BEFORE THE**
**PHYSICIAN ASSISTANT BOARD**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**CLAYTON T. RECTOR, P.A.**<br>**3721 Jefferson Street**<br>**Napa, CA 94558**<br>**Physician Assistant License No. PA 16404**<br><br>Respondent. | Case No. 950-2018-002094<br><br>**ACCUSATION** |

Complainant alleges:

**PARTIES**

1. Rozana Khan (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs.

2. On or about May 14, 2002, the Physician Assistant Board issued Physician Assistant License No. PA 16404 to Clayton T. Rector, P.A. (Respondent). The Physician Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2022, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Physician Assistant Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3527 of the Code states:

"(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a PA license after a hearing as required in Section 3528 for unprofessional conduct that includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

"(b) The board may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, an approved program after a hearing as required in Section 3528 for a violation of this chapter or the regulations adopted pursuant thereto.

"(c) The Medical Board of California may order the imposition of probationary conditions upon a physician and surgeon's authority to supervise a PA, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

"(d) The board may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, a PA license, after a hearing as required in Section 3528 for unprofessional conduct that includes, except for good cause, the knowing failure of a licensee to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of bloodborne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of

Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the Osteopathic Medical Board of California, the Podiatric Medical Board of California, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California to encourage appropriate consistency in the implementation of this subdivision.

"The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of bloodborne infectious diseases.

"(e) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

"(f) The expiration, cancellation, forfeiture, or suspension of a PA license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

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6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care."[1]

**COST RECOVERY**

7. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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[1] Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical conduct of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

## FACTUAL ALLEGATIONS

8. Respondent is a physician assistant who began providing medical care at Mercy Medical Group (the MMG clinic) in Sacramento, California, in or about June 2009.

9. On or about October 5, 2018, the Central Complaint Unit of the Medical Board of California received a report under Business and Professions Code section 805 indicating that MMG terminated Respondent's employment on September 26, 2018. The report states that Respondent's termination stemmed from the inappropriate examination of two female patients.

Patient A[2]

10. On or about January 24, 2018, Respondent saw Patient A, a 33 year-old female at the time of the appointment, for the first and only time at MMG clinic. She complained of upper abdominal pain, nausea, and early satiety. Patient A had previously been scheduled for an endoscopy, but that was canceled when she became pregnant. Respondent documented a complete physical examination.

11. During the above visit, Respondent directed Patient A to get onto the examination table so that he could look at her stomach. Patient A lifted up her sweatshirt and tucked it under her bra and pulled down her track pants so that the waistband went from hip bone to hip bone around her pubic area. Respondent palpated Patient A's abdomen in a manner that seemed consistent with her prior examinations. While examining Patient A's abdomen, he discussed her symptoms but did not explain what he was doing. Respondent then lifted up the front portion of the waistband on Patient A's track pants. Respondent did not indicate what he was doing or what he was looking for at this time. This made Patient A uncomfortable because she had not complained of pain in that area and did not know why Respondent needed to look there. After a couple seconds, Respondent released the waistband, which returned to its original position. Shortly thereafter, the examination ended and Respondent left the examination room.

12. On or about January 25, 2018 and February 1, 2018, Patient A contacted MMG and reported a complaint concerning Respondent's conduct at the above visit.

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[2] Patient names are omitted to protect patient privacy. They will be provided in discovery.

13. During an interview with Board investigators on July 17, 2020 (the "Board Interview"), Respondent stated that he did not recall pulling up the waistband of Patient A's track pants. Respondent further denied that he would have ever lifted the patient's pants in order to view the underwear or genital area.

**Patient B**

14. On or about September 5, 2018, Respondent saw Patient B, then a 36 year-old female, for follow-up complaints regarding constipation, abdominal pain, and changes in her bowel habits. Patient B had previously been seen by Dr. R.K. in the gastroenterology division at MMG for similar complaints and had an extensive evaluation, including laboratory data, colonoscopy, endoscopy, ultrasound, CT scan, HIDA scan, gastric emptying, stool study, Sitzmarks exam, and upper GI and small bowel follow through. At her prior visit with Dr. R.K., on or about August 9, 2018, Dr. R.K. documented that the abdominal pain may be related to intestinal spasm or constipation.

15. During the September 5, 2018 visit, Respondent documented a history that included abdominal cramping, diarrhea and constipation. He documented performing a complete physical examination and impression of constipation, abdominal pain, and weight loss. He arranged for two-view abdominal x-ray and documented that he would try to get approval for a capsule endoscopy and a Trulance prescription.

16. Patient B was fully dressed with a pair of jeans and a blouse when the above visit began. After Patient B described her symptoms and stated that her discomfort was located from just below her belly button and up, Respondent instructed her to lay down on the examination table. Without asking, Respondent lifted Patient B's blouse and began palpating her abdomen around her navel for approximately one minute. Respondent talked while palpating her abdomen but did not describe what he was doing or allow Patient B to ask questions. At some point, Respondent stated something to the effect of "let me see something" and, without any warning or explanation, unbuttoned Patient B's pants. Respondent reached down underneath Patient B's underwear on her right side to the area just above her right hip crease. Respondent was very close to the skin area of her vagina and may have touched her vagina. Respondent then did the same

thing down Patient B's left side. After that, Respondent lifted up Patient B's underwear so that the pubic area was exposed (but not her vagina). Respondent stated that the examination was done, and he left the room. There was no chaperone present (or offered) at any point in the examination.

17. On or about September 13, 2018, Patient B went to MMG administrative offices and reported a complaint concerning Respondent's conduct at the above visit. She reported that Respondent's conduct made her uncomfortable and embarrassed.

18. During the Board Interview, Respondent stated that he did not unzip or unbutton Patient B's pants and that he did not recall reaching into her pants or underwear. Respondent stated that he palpated the inguinal area for horizontal lymph nodes.

**FIRST CAUSE FOR DISCIPLINE**

(Gross Negligence)

19. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), and section 3527 of the Code, in that he committed gross negligence during the care and treatment of Patient A and Patient B, as more particularly alleged in paragraphs 8 through 18 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

**SECOND CAUSE FOR DISCIPLINE**

(Repeated Negligent Acts)

20. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), and section 3527 of the Code, in that he committed repeated negligent acts during the care and treatment of Patient A and Patient B, as more particularly alleged in paragraphs 8 through 19 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

**THIRD CAUSE FOR DISCIPLINE**

(Unprofessional Conduct)

21. Respondent's license is subject to disciplinary action under sections 2227, 2234, and 3527 of the Code in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly

alleged in paragraphs 8 through 20 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Board issue a decision:

1. Revoking or suspending Physician Assistant License No. PA 16404, issued to Clayton T. Rector, P.A.;

2. Ordering Clayton T. Rector, P.A. to pay the Physician Assistant Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Ordering Clayton T. Rector, P.A., if placed on probation, to pay the Physician Assistant Board the costs of probation monitoring; and,

4. Taking such other and further action as deemed necessary and proper.

DATED: June 17, 2021

Rozana Khan

ROZANA KHAN
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
*Complainant*

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